SERVED: December 27, 1993

NTSB Order No. EA-4052

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 27th day of December, 1993

DAVID R. HINSON, Administrator, Federal Aviation Administration, Complainant, v. JAMES C. ROBINSON, Respondent.	Docket SE-13360

OPINION AND ORDER

Respondent has appealed from the oral initial decision issued by Administrative Law Judge William E. Fowler, Jr., at the conclusion of a hearing held in this case on December 3, 1993.[1] In that decision the law judge affirmed the Administrator's emergency order revoking respondent's airline transport pilot (ATP) certificate based on his alleged operation of a twin-engine

[1] Attached is an excerpt from the hearing transcript containing the oral initial decision.

helicopter with only one operable engine, in violation of 14 C.F.R. §§ 91.7(a) and (b), 91.9(a) and 91.13(a).[2] For the reasons that follow, respondent's appeal is denied and the initial decision is affirmed.

On May 26, 1993, at approximately 6:26 p.m., respondent landed an Aerospatiale AS355 (twin-engine) helicopter at Wall Street Heliport, New York City. While waiting for his passenger (the owner of the helicopter) to arrive, respondent experienced a "chip light"[3] on the number two engine, and informed the heliport

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[2] These regulations provide as follows:

§ 91.7 Civil aircraft airworthiness.

(a) No person may operate a civil aircraft unless it is in an airworthy condition.
(b) The pilot in command of a civil aircraft is responsible for determining whether that aircraft is in condition for safe flight. The pilot in command shall discontinue the flight when unairworthy mechanical, electrical, or structural conditions occur.

§ 91.9 Civil aircraft flight manual, markings, and placard requirements.

(a) Except as provided in paragraph (d) of this section, no person may operate a civil aircraft without complying with the operating limitations specified in the approved Airplane or Rotorcraft Flight Manual, markings, and placards, or as otherwise prescribed by the certificating authority of the country of registry.
* * *

§ 91.13 Careless or reckless operation.

(a) *Aircraft operations for the purpose of air navigation.* No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

[3] This helicopter is equipped with a chip detector system which senses and indicates -- by illuminating a "chip light" on the control panel -- when metal particles, or chips, are present

senior operations agent, John Licciardi, that he was having "trouble" with that engine. After the passenger boarded the helicopter at approximately 7:00 p.m., Mr. Licciardi observed that the helicopter "skidded around the heliport, rather than hover[ing] up off the ground," as in a normal takeoff. (Tr. 31.) It appeared to Mr. Licciardi that the helicopter was not "able to get lift," and he characterized the maneuver in his heliport log entry at 7:07 as an "attempted . . . single engine takeoff using the barge,[4] to no avail." (Tr. 31, Exhibit A-3.)[5]

The passenger disembarked from the helicopter and respondent proceeded to make arrangements for another helicopter to pick up the passenger. Mr. Licciardi testified, and his heliport log entry of 7:25 confirms, that respondent left him with the impression that both he and the passenger would be leaving with the replacement helicopter and that the helicopter which had experienced engine trouble would be remaining at the facility

(..continued)
in the oil. The pilot can activate a "chip pulse" switch which, if the particles are small enough, may clear the oil and the warning light will go off. The helicopter may then be operated normally. However, if the metal particles are too large to be cleared by the "chip pulse" switch the light will remain on and, because the undisturbed particles could lead to engine failure, further operation is considered unsafe. (Tr. 94-102, 212; Exhibit A-9, engine operations manual.)

[4] The "barge" refers to an extension off of the main heliport pier, which is normally used for helicopter parking.

[5] Mr. Licciardi admitted that respondent never indicated what sort of trouble he had with the engine or that he was operating with a single engine, and that it was Mr. Licciardi's own conclusion, based on his experience in observing helicopter operations, that respondent attempted, and eventually accomplished, a "single-engine" takeoff. (Tr. 38, 55, 81.)

overnight. (Tr. 37, 59, Exhibit A-3.) However, Mr. Licciardi's next log entry (at 7:35) indicates that respondent informed him he would "attempt a second single engine take off when [the replacement helicopter pilot] picks up [the passenger]."[6] (Exhibit A-3.) Indeed, at approximately 8:03 p.m., three minutes after respondent's passenger departed on the other helicopter, respondent successfully took off from the Wall Street Heliport, according to Mr. Licciardi, using the barge as a "runway . . . to get lift." (Tr. 33.) Respondent flew the helicopter to its maintenance base at RACO Helicopters, Farmingdale, New Jersey, a flight of about 17 minutes.

The Administrator's investigating inspector testified, and respondent does not dispute, that a "running" takeoff, such as described by Mr. Licciardi, is normally used when a helicopter's engines are not producing sufficient power to accomplish a normal takeoff. (Tr. 151, 168-9.) The inspector further opined that the circumstances surrounding respondent's takeoff from Wall Street Heliport (the running takeoff profile, and the departure of the sole passenger from the six-person capacity helicopter prior to its departure) indicated that respondent had lost power in one of his engines. (Tr. 151-3.) The Administrator's experts also testified that with only one functioning engine, this helicopter is unairworthy, because it is type certificated for twin-engine operation; that operation with a single engine is unsafe, because the helicopter's performance is substantially

[6] See footnote 5.

degraded; and that such operation is contrary to the aircraft flight manual. (Tr. 102, 118-9, 152, 173, 175-6.)

It is undisputed that immediately after the flight here at issue, one of the helicopter's engines was removed and repaired, and that maintenance records indicate the problem was "chip indication and power failure." (Tr. 242, 245, 260; Exhibit A-8.) Indeed, respondent concedes that a chip light was illuminated when he landed at RACO Helicopters after the subject flight from Wall Street, and that he had experienced engine failure and landed with only one engine. (Tr. 286.) He claimed, however, that the engine failure occurred as he was approaching his destination airport at RACO, and not -- as the Administrator maintains -- prior to takeoff at Wall Street. (Tr. 286.) Although respondent concedes that he experienced a chip light at Wall Street, he testified that he successfully extinguished that chip light by using the chip pulse switch and experienced no further problems at Wall Street, but then experienced a second chip light as he was approaching RACO. (Tr. 275-6.)

Respondent maintains that both engines were fully operational at Wall Street and that the unusual maneuvers observed by Mr. Licciardi were merely simulated low-power operations which respondent undertook to determine whether -- in the event of actual engine trouble -- continued flight would be possible. Respondent testified that he decided the passenger should leave on another helicopter because, in view of his above-normal fuel load, he was concerned that the helicopter might be

too heavy to safely continue the flight should there be an engine failure. He further explained that, after burning off fuel for almost an hour after the failed departure attempt with the passenger on board, so as to further reduce the helicopter's weight, he felt he could safely take off without undue risk. (Tr. 277-81.) The owner/intended passenger of the helicopter corroborated respondent's explanation of his maneuvers. (Tr. 216-31.)

With regard to his running takeoff from Wall Street, respondent testified that he simulated single-engine operation only during the early portion of the run in order to verify that he would have sufficient power in the event of an actual engine failure, but switched to normal two-engine power for the takeoff itself. (Tr. 284-5.) Accordingly, it is respondent's position that he did not depart from Wall Street with only one operable engine, as alleged in the complaint.

In his initial decision, the law judge recognized that this case turns on an issue of credibility. He then proceeded to note the parties' respective positions regarding the condition of the aircraft at Wall Street, and concluded that the Administrator had "sustained his burden of proof" through the testimony of Mr. Licciardi and the testimony of the safety inspectors. (Tr. 350.) Thus, although the law judge did not explicitly state that he was rejecting respondent's testimony as incredible, that is obviously what the law judge did.

Respondent challenges the law judge's credibility

determination,[7] and contends that his factual findings are unsupported by the record. We disagree. In our view, there is abundant circumstantial evidence to support the law judge's conclusion that, despite his denials, respondent experienced engine failure at Wall Street but took off nonetheless. Although respondent attempted to rebut that evidence by offering an alternate version of events, the law judge rejected that version and we see no reason to disturb that credibility finding.[8]

[7] Respondent actually focuses his challenge on the law judge's crediting of Mr. Licciardi's testimony, rather than his rejection of respondent's. Respondent contends that the law judge had "significant doubts as to Mr. Licciardi's testimonial reliability," and cites the law judge's comments that Licciardi was not "an A number one witness" and that "some of the things he put down [in the heliport log] are conclusions of his own," and must be taken "with a grain of salt." (App. Br. at 20.) However, we think these comments merely indicate that the law judge recognized -- as respondent had attempted to show throughout the hearing -- that Licciardi's description of the maneuvers as "single-engine" attempts or takeoffs were personal conclusions rather than known facts. In any event, the Administrator's case does not rise or fall on the strength of Mr. Licciardi's characterizations. In our view, the undisputed sequence of events in this case (the aborted takeoff with the passenger after an admitted chip light, the discharge of the passenger, the running takeoff, and the subsequent repair of an engine due to "power failure") is strong circumstantial proof that respondent experienced engine failure at Wall Street.

[8] Administrator v. Smith, 5 NTSB 1560, 1563 (1986) (resolution of a credibility determination, unless made in an arbitrary or capricious manner, is within the exclusive province of the law judge).

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and

2. The initial decision and the emergency order of revocation are affirmed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HAMMERSCHMIDT, and HALL, Members of the Board, concurred in the above opinion and order.